

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 57-009-13-1-5-00060
Petitioners: Michael & Linda Price
Respondent: Noble County Assessor
Parcel: 57-19-04-100-025.000-009
Assessment Year: 2013

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their 2013 assessment appeal with the Noble County Assessor by filing a Petition for Review of Assessment by Local Assessing Official (Form 130) on September 26, 2013.
2. The Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on May 20, 2014, lowering the assessment, but not to the level requested by the Petitioners.
3. The Petitioners filed their Petition for Review of Assessment (Form 131) with the Board on June 2, 2014. They elected the Board's small claims procedures.
4. The Board issued a notice of hearing on August 12, 2014.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on October 1, 2014. She did not inspect the property.
6. Michael and Linda Price appeared *pro se*. John Day appeared as a witness for the Petitioners. Assessor Kim Miller appeared for the Respondent. All of them were sworn.

Facts

7. The property under appeal is a single-family home located at 227 South Sunset Shores in Albion.
8. The PTABOA determined the total assessment is \$105,000 (land \$47,600 and improvements \$57,400).

9. The Form 131 claimed the total assessment should be \$84,400 (land \$27,000 and improvements \$57,400).

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:¹

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| Petitioners Exhibit 1: | Subject property record cards with assessment dates ranging from 1999 through 2013, |
| Petitioners Exhibit 2: | Photograph, property record card, and Beacon summary sheet for 84 South Willow Haven Drive, Albion, |
| Petitioners Exhibit 3: | Photograph, property record card, and Beacon summary sheet for 0535 South Lakeview Drive, Albion, |
| Petitioners Exhibit 4: | Photograph, property record card, and Beacon summary sheet for 0605 South Lakeview Drive, Albion, |
| Petitioners Exhibit 5: | Beacon summary sheet for 2105 Lakeshore Drive, Albion, |
| Petitioners Exhibit 6: | Beacon summary sheet for 205 Sunset Shores, Kendallville, |
| Petitioners Exhibit 7: | Property record card for 3493 West Harlan Drive, Albion, |
| Petitioners Exhibit 8: | Five photographs of the subject property, |
| Petitioners Exhibit 9: | Eleven various property listings, |
| Petitioners Exhibit 10: | Four photographs of the subject property, |
| Petitioners Exhibit 11: | Form 131, |
| Petitioners Exhibit 12: | Beacon summary sheet for 265 South Sunset Shores, Albion, |
| Petitioners Exhibit 13: | Form 115 for 0127 Sunset Shores, Albion, |
| Petitioners Exhibit 14: | Beacon summary sheet for 0473 North Oakwood Drive, Albion. |
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| Respondent Exhibit 1: | Subject property record card, |
| Respondent Exhibit 2: | Form 130, |
| Respondent Exhibit 3: | List of comparable properties attached to Form 130, |
| Respondent Exhibit 4: | (Exhibit was withdrawn), |
| Respondent Exhibit 5: | Aerial photograph of the subject property, |
| Respondent Exhibit 6: | Form 131, |
| Respondent Exhibit 7: | PTABOA hearing notes, |

¹ Initially, the Petitioners claimed Respondent Exhibits 11, 12, and 13 were not disclosed prior to the hearing. However, when the Respondent formally introduced these exhibits, the Petitioners stated that they had no objections. Accordingly, Respondent Exhibits 11, 12, and 13 are admitted.

- Respondent Exhibit 8: Letter dated January 9, 2014, from Judy Fox at the Noble County Health Department to Noble County Assessor Kim Miller,
- Respondent Exhibit 9: (Exhibit was withdrawn),
- Respondent Exhibit 10: Five property record cards with sales-comparison analysis,
- Respondent Exhibit 11: Subject property record card,
- Respondent Exhibit 12: Copy of Petitioners' Exhibit 9 with notations, and aerial photographs,
- Respondent Exhibit 13: Front foot comparable analysis of five properties.

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Hearing notice dated July 29, 2014,
- Board Exhibit C: Respondent's request for continuance of hearing dated July 30, 2014,
- Board Exhibit D: Continuance request granted by the Board dated August 6, 2014,
- Board Exhibit E: Re-scheduled hearing notice dated August 12, 2014,
- Board Exhibit F: Hearing sign-in sheet.

d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

- a) The subject property's land is assessed too high. The land value has increased from \$135 per front foot in 2006 to \$550 per front foot in 2013. When the Petitioners questioned the Respondent about the increase, the Respondent replied that the property is viewed as a whole unit, and if the land value were lowered, the improvement value would be increased, so that the property's overall assessment would remain at market value. *M. Price argument; L. Price testimony (referencing Resp't Ex. 7); Pet'rs Ex. 1.*
- b) The Petitioners' home is "simply-designed" with two bedrooms and no exterior features. Further, it is situated in a flood plain, so the property floods after two inches of rain. *M. Price testimony; Pet'rs Ex. 8, 10.*
- c) The Petitioners compared their land assessment to the land assessments of three properties located nearby on Bear Lake, Little Long Lake and Lower Long Lake. The front-foot values for the nearby properties ranged from \$155 to \$400 per front foot. The subject property is assessed at \$550 per front foot. *M. Price testimony; Pet'rs Ex. 5, 6, 7.*
- d) Two other properties located in the same neighborhood as the subject property have lower land assessments. One such property's land was assessed at \$33,300. The other property's land was assessed at \$37,000. Not only are both of these properties

- assessed for less than the subject property, the second property consists of one-and-a-half lots. *M. Price testimony; Pet'rs Ex. 3, 13.*
- e) Properties similar to the subject property are currently listed for sale in Noble County at prices ranging from \$33,000 to \$89,900. *M. Price testimony; Pet'rs Ex. 9.*
 - f) Further, two lots located near the subject property sold for a combined total of \$85,000. Another neighboring property is now up for sale for \$61,000. *M. Price testimony; Pet'rs Ex. 4, 12.*
 - g) Finally, of the Respondent's purportedly comparable properties, one has a land assessment of \$18,300. Further, another of the Respondent's purportedly comparable properties, the Mankowski property, is not comparable to the Petitioners' home. The Mankowski home is a two-story, A-frame house, with two-and-a-half full baths, three bedrooms, and six furnished rooms. Also, the Mankowski property is the nicest home on the lake and it sold for \$235,000 in 2012. *M. Price argument (referencing Resp't Ex. 3, 13); Pet'rs Ex. 2, 14.*

12. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The assessment changed from 2012 to 2013 because of trending dictated by a ratio study. *Miller argument; Resp't Ex. 1.*
- b) One property utilized in the ratio study was the Mankowski property. The Petitioners argue that this property is not comparable to the subject property. However, it is located near the subject property, and is therefore eligible for comparison purposes because "location is the most important aspect in comparing properties." *Miller argument (citing Ronald J. Frick v. Noble Co. Ass'r, Ind. Bd. Tax Rev. pet. no. 57-003-12-1-1-00003 (Sept. 22, 2014)).*
- c) The Respondent also offered her own sales-comparison analysis. She searched for properties that sold on non-ski lakes similar to the subject property. She used six comparables in her analysis. She made adjustments to the sale prices for grade, condition, age, baths, heating, air conditioning, garages, fireplaces, and exterior features. After completing all the adjustments, the Respondent concluded that the subject property's 2013 assessment should be \$124,600. *Miller testimony; Resp't Ex. 10.*
- d) The purportedly comparable properties chosen by the Petitioners do not have frontage on the lake. The Petitioners' property, however, is located directly on the lake. *Miller testimony; Resp't Ex. 5, 11, 12, 13.*
- e) Finally, the Petitioners claimed at the PTABOA hearing that they could not build on their land, a letter from the Noble County Health Department states otherwise. This letter states that for any lot less than 18,000 square feet, the property owners could request a variance to build on their property. *Miller testimony; Resp't Ex. 7, 8.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code section 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change is effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the parties agreed that the 2013 assessment increased by more than 5% over the 2012 assessment. In fact, the total assessed value of the subject property increased from \$88,900 to \$105,000.² Thus, according to the burden shifting provisions set out in Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the 2013 assessment is correct. To the extent that the Petitioners seek an assessment below the 2012 level, they bear the burden of proving a lower value.

² Here, the land assessment increased from \$26,800 to \$47,600, while the assessment of the improvements actually decreased from \$62,100 to \$57,400. Here, the Petitioners only appealed the land assessment. However, Ind. Code § 6-1.1-15-17.2 does not expressly contemplate a separate analysis for land-only appeals. In applying the Ind. Code § 6-1.1-15-17.2, the Board tends to disregard piecemeal approaches. *See Mac's Convenience Stores, LLC v. Hamilton Co. Ass'r*, Ind. Bd. Tax Rev. pet. no. 29-006-12-1-4-02050 (November 14, 2014). Therefore, in this case, the Board holds that the burden-shifting statute should be applied to the total assessment, thus placing the burden on the Respondent.

Analysis

17. The Respondent failed to make a prima facie case that the 2013 assessment was correct.
- a) Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For March 1, 2013, assessments, the assessment and valuation dates were the same. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Respondent had the burden to prove the subject property's value. Because the Petitioners only challenged the land value, she theoretically could have met her burden by proving only the land value. However, she succeeded in neither proving the land value nor the whole property's value.
 - d) First, the Respondent pointed to trending resulting from a ratio study to explain the increase in the land assessment from 2012 to 2013. However, failed to offer any support for the notion that a ratio study may be used to prove that an individual property's assessment reflects its market value-in-use. Indeed, the International Association of Assessing Officials Standard on Ratio Studies, which 50 IAC 27-1-44 incorporates by reference, says otherwise:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. However, the ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel. Such statistics can be used to adjust assessed values on appealed properties to the common level. INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES

- e) When Ind. Code § 6-1.1-15-17.2 applies, the Respondent's burden is not merely to explain why the property's assessment increased. Instead, a Respondent must offer probative evidence proving the subject property's market value-in-use.
- f) In an attempt to prove the subject property's entire value, the Respondent did offer her version of a sale-comparison analysis. However, for sales data to be probative, the sold properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not show comparability. *See Long*, 821 N.E.2d 466, 470. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect the properties' relative market values-in-use. *Id.* at 471.
- g) The Respondent, at least to some extent, attempted to compare the sold properties to the subject property and make adjustments for certain differences. But those adjustments appear to be taken from the cost tables in the Guidelines. The Respondent's methodology is actually a hybrid of the sales-comparison and cost approaches. This methodology is not a generally accepted appraisal method, and she did not provide any substantial evidence to prove otherwise. Therefore, her analysis is insufficient to be probative of the subject property's value. Thus, the 2013 assessment must be reduced to the prior year's level of \$88,900.
- h) The Petitioners, however, requested a total value of \$84,400, which is lower than the total 2012 assessment. The evidence the Petitioners offered at the hearing does not contain a value conclusion. For that reason the Petitioners failed to make a prima facie case for an assessment below the prior year's assessment of \$88,900.
- i) Even had the Petitioners provided a value conclusion for the lower amount requested, they failed to make a case. Their evidence of photographs, assessments of other properties, and sale listings of other properties do not prove the market value-in-use of their property. They offered no evidence that any of the properties presented are comparable to the subject property. Further, they failed to provide any analysis as to how relevant differences affect their values. *See Long*, 821 N.E.2d 466, 470, 471. Thus, the Petitioners failed to provide sufficient probative evidence to reduce the subject property's 2013 assessment below its 2012 value.
- j) Because the Respondent failed to offer enough probative evidence to show the market value-in-use, she failed to make a prima facie case that the 2013 assessment is correct. Therefore, the Petitioners are entitled to have that assessment returned to its 2012 level of \$88,900. As discussed above, however, the Petitioners only appealed their land assessment. However, Ind. Code § 6-1.1-15-17.2 only contemplates the

consideration of the total assessment. Thus, the total assessment must be reduced to the 2012 level of \$88,900.

Conclusion

18. The Respondent had the burden of proving the 2013 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioner sought an assessment lower than the 2012 value, but likewise failed to make a prima facie case. Thus, the Board orders that the subject property's 2013 assessment be reduced to the 2012 amount of \$88,900.

Final Determination

In accordance with these findings and conclusions of law, the 2013 assessment must be changed to \$88,900.

ISSUED: February 25, 2015

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.